



**STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL**

ANNUAL REPORT

**OF THE
HOME BUILDER REGISTRATION UNIT
CONSUMER PROTECTION DIVISION
OFFICE OF THE ATTORNEY GENERAL**

**SUBMITTED TO THE
GOVERNOR AND GENERAL ASSEMBLY
OF MARYLAND**

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I. **EXECUTIVE SUMMARY**

Prior to January 1, 2001, home builders were not required to be registered or licensed by the State of Maryland.¹ Existing laws provided partial protections for home buyers by focusing on protection of the buyer's deposit, required contract provisions and disclosures, and prescribed terms of non-mandatory home warranty security plans.² The General Assembly heard testimony from home buyers about problems they faced with their builders that were not being adequately prevented or resolved by the then current law. In response to this testimony, the General Assembly in the 2000 Session passed the Maryland Home Builder Registration Act (the "Act" or "HBRA"). The HBRA is designed to provide additional protections to new home buyers by requiring builders to register with the State and by providing an enforcement mechanism that allows the State to prevent builders with a bad track record from continuing to build in Maryland.

The Home Builder Registration Unit (the "Unit") of the Consumer Protection Division of the Office of the Attorney General was created by the HBRA to administer and enforce the Act. The Act requires that the Consumer Protection Division make an annual report of its activities to the Governor and General Assembly. This is the fourth report since the law became fully operational on January 1, 2001.

The report focuses on the following areas:

- **Registration of Builders:** 3,223 builders were registered as of June 30, 2004. 521 of those builders registered between July 1, 2003 and June 30, 2004.
- **Registration Renewal:** From July 1, 2003 to June 30, 2004, the Unit mailed renewal applications to 713 builders whose registrations were due to expire by June 1, 2003. 500 of those builders have renewed their registration as of June 30, 2004.
- **Law Enforcement:** The Unit opened 57 investigations between July 1, 2003 and June 30, 2004 after receiving reports of unregistered builders, violations of the Home Builder Registration Act, the Consumer Protection Act, or violations of the Custom Home Protection Act. In one action, the Consumer Protection Division issued a Final Order against a Prince George's County builder, requiring him to refund

¹ Montgomery County and Prince George's County have varying forms of builder licensing or registration.

² New Home Deposits, Md. Code Ann., Real Property §10-301 et seq., Custom Home Protection Act, Md. Code Ann., Real Property §10-501 et seq., and New Home Warranty Security Plans, Md. Code Ann., Real Property §10-601 et seq.

payments of \$23,500 collected from a consumer and pay penalties of \$100,000. The Consumer Protection Division also issued a cease and desist order requiring two related Baltimore area home builders and their principals to pay more than \$605,362.52 in restitution for taking deposits and payments from consumers and then failing to complete their homes. Charges have been brought in five other cases and the Unit entered into settlement agreements with another eight builders. Most of the investigations have been resolved by having the builder register or determining that the builder is no longer building in Maryland and is not required to register.

- **Education of Builders and Consumers:** As of June 30, 2004, the Unit had distributed a total of 145,418 copies of *BUYING A NEW HOME - Consumer Rights and Remedies Under Maryland Law*; met with home builders and consumers to educate them about their rights and responsibilities under Maryland law; and maintained and updated its website – www.oag.state.md.us/homebuilder – to give consumers, builders, permit offices and the public information about registered builders, building laws, and home building issues for consumers.

- **Coordination with Local Building Permit Offices:** The Unit continues to coordinate with local building permit offices to ensure that unregistered builders cannot obtain building permits and that builders with unresolved building code violations are reported to the Unit. Lists of registered builders are e-mailed and sent to permit offices each month and are publicly available on the Unit's website.

- **Evaluation of Consumer and Builder Dispute Resolution:** The Division's Mediation Unit handled 273 consumer complaints involving 153 home builders between July 1, 2003 and June 30, 2004. The overwhelming majority of the complaints concerned claims about construction defects.

- **Warranty Programs:** During the 2002 Session, the General Assembly transferred to the Unit responsibility for New Home Warranty Security Plans, a program previously overseen by the Department of Labor, Licensing and Regulation. The Unit has requested information from the plans concerning their operation and claims experience to ensure the plans are continuing to meet the requirements of the new home warranty law.

- **Legislation:** During the 2004 Session, the Maryland General Assembly lowered the fees builders pay to register and renew their registration to act as a builder in the State of Maryland. Effective June 1, 2004, the fee for an initial two year registration was lowered to \$300. The fee to renew registration was lowered to \$150 for builders

issued 10 or fewer permits the preceding year and to \$300 for those builders issued 11 or more the preceding year.

II. REGISTRATION OF BUILDERS

A. THE HOME BUILDER REGISTRATION UNIT

A central requirement of the HBRA is that all new home builders in Maryland register with the Unit. The Home Builder Registration Unit was created by the HBRA to administer and enforce the Act. A special fund was created to fund the Unit's activities, which is paid for through the collection of registration fees. The HBRA sets the initial registration fee paid by builders at \$300 for a two-year registration. The Act further provides for renewal fees for an additional two-year period of \$150 for builders who were issued 10 or fewer building permits during the preceding year and of \$300 for builders who were issued 11 or more permits during the preceding year. The Home Builder Registration Fund is used solely to fund the costs of the Home Builder Registration Unit. HBRA §4.5-203, §4.5-303, §4.5-305. The Division's costs for the Unit include salary, benefits, and administrative costs for a five-person unit; production and distribution of the consumer education pamphlet; continued maintenance of the website and data systems; and perhaps most importantly, enforcement costs. The Unit's five positions include: a Director/Assistant Attorney General, an Administrator who oversees builder registration, an Administrator who oversees new home warranty security plans and builder compliance with deposit protection laws, an Investigator, and a Secretary.

B. BUILDER REGISTRATION AND RENEWAL UNDER THE HBRA

The Act establishes a registration procedure that requires the disclosure by the builder of necessary information to the Unit, and the payment of the required registration fee. The Act does not provide for competency testing or proof of financial responsibility. The Unit has implemented the registration requirements with an objective of making registration an easy and quick procedure.

To register, builders are required to complete an application form, provide information about the principals of the company and legal proceedings involving the builder, and pay the registration fee of \$300. Each builder's registration lasts two years and expires on one of four quarterly dates based upon the date the builder initially registered: March 1, June 1, September 1, or December 1. Having registrations expire quarterly makes it easier for builders, permit offices, consumers and the Unit to keep track of whether builders are currently registered and when registrations expire. The Unit mails a renewal application to the builder's last known address at least 60 days before the registration expires.

The application provides the Unit with general information about the company or entity that is registering. It also provides the Unit with information about each "principal" of the company, which the HBRA defines to be persons with at least a 10% ownership interest, and directors, partners, officers and managers of the company. One of the purposes of the Home Builder Registration Act is to track builders who dissolve entities without meeting their financial obligations and then begin building again under a new company name. Such builders may be subject to denial or revocation of their registration under HBRA §4.5-308. To achieve this goal, the Unit must gather information from the applicants about the principals who own and operate building companies.

As of June 30, 2004, 3,223 home builders were registered with the Unit. Although the significant majority registered in late 2000 and early 2001 when the program first began, the Unit continues to receive registration applications from new builders on a daily basis. 521 new builders registered with the Unit between July 1, 2003 and June 30, 2004.

In the past year, the Unit mailed renewal applications to the 713 builders that registered under the HBRA, whose initial two year registrations were due to expire between September 1, 2003 and June 1, 2004. These builders initially registered in late 2001 and early 2002. As of June 30, 2004, 500 of these builders have been approved for renewal. 212 builders did not renew their registrations (71 notified the Unit that they were not renewing, 4 withdrew their applications, and 208 did not submit a renewal application). The majority of builders registered when the program first started in late 2000 and early 2001. The Unit is currently preparing for builders to be able to register and renew their registrations over the Internet. The goal is for Internet registration and renewal to be available for the nearly 1,500 builders whose registrations are set to expire March 1, 2005.

C. WHO ARE MARYLAND'S BUILDERS?

The HBRA defines "home builder" and "new home" broadly to ensure that all new home builders in Maryland must be registered. HBRA §4.5-101(f) and (k). The exceptions to the HBRA are narrowly drawn.³ Information provided by builders in the registration process, combined with other available data, provides the following profile of Maryland Builders:

- **Number of Builders:** There were 3,223 registered builders in Maryland as of June 30, 2004. 521 of those builders registered between July 1, 2003 and June 30, 2004 and the Unit continues to receive new applications daily.

- **Type of Construction:** The vast majority of Maryland's builders report building either custom homes (63%) or new homes (49%). Another 9% report building condominiums, 7% report building industrialized buildings, and 4% report building mobile homes.

- **Form of Business:** The majority (53%) of Maryland's builders use corporations as their form of business organization. Another 20% are sole proprietorships, 22% are limited liability companies (LLCs), and 3% are partnerships. 2% did not report the form of their business.

- **Location of Builders and Housing Construction:** Not surprisingly, Maryland's builders continue to be located in the regions of Maryland that are experiencing the most new home building activity, as measured by the number of single family housing permits issued: 63.1% of building permits for single family construction were issued in the Washington Suburban Region and in the Baltimore Region, where 53% of Maryland's builders are headquartered. Both the Upper Eastern Shore and Southern Maryland Regions continue to remain consistent in the percentage of builders headquartered there (23.3% vs. 24.3% last year) and percentage of state wide permits issued in the region (21.9% vs. 21.8%). Similarly, the Lower Eastern Shore Region remained consistent in the number of permits for new homes issued (7.6% vs. 7.8% last year). The percentage of builders who registered in Maryland but were headquartered in other states was also consistent with last years findings (8.2% vs. 8.0% last year).

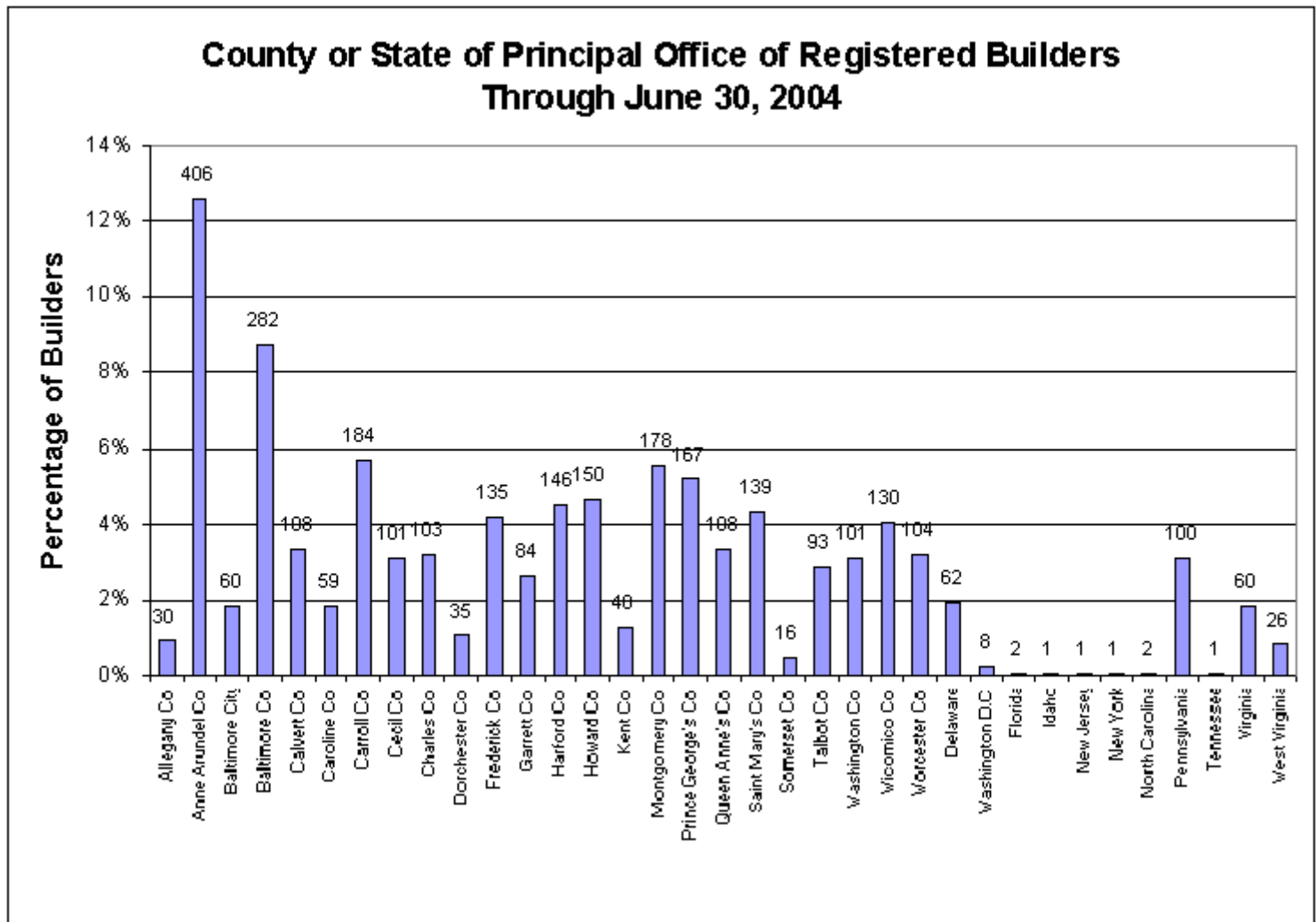
³ The HBRA excludes from registration employees, subcontractors and vendors of a registered home builder; the manufacturer of industrialized buildings unless the manufacturer also installs the building; real estate developers who do not also construct homes; construction financiers; and builders who build solely in Montgomery County. HBRA §4.5-101(f)(3). Landowners who obtain building permits in their own name and who directly perform the construction on their own land for their own use are also exempted. HBRA §4.5-601.

The following chart shows the headquarters of builders in each region, the number of single family housing permits issued in each region from July 1, 2003 through June 30, 2004, and the percentage of the total number of single family housing permits issued in Maryland in each region during that period.

Region	Percentage of Builders With Headquarters in Region	Number of Permits Issued in Region (7/1/03 - 6/30/04)	Percentage of State-wide Permits Issued in Region
Baltimore Region (Anne Arundel, Baltimore City, Baltimore County, Carroll, Harford, Howard)	38.1%	7,766	36.5%
Suburban Washington Region (Frederick, Montgomery, Prince George's)	14.9%	5,663	26.6%
Upper Eastern Shore Region (Caroline, Cecil, Kent, Queen Anne's, Talbot)	12.4%	2,108	9.9%
Southern Region (Calvert, Charles, St. Mary's)	10.9%	2,559	12.0%
Lower Eastern Shore Region (Dorchester, Somerset, Wicomico, Worcester)	8.8%	1,608	7.6%
Out of State (Pennsylvania, Delaware, Virginia, West Virginia, Washington, D.C., Massachusetts, New York, North Carolina, Tennessee)	8.2%		
Western Region (Allegany, Garrett, Washington)	6.7%	1,572	7.4%
Totals	100%	21,276	100%

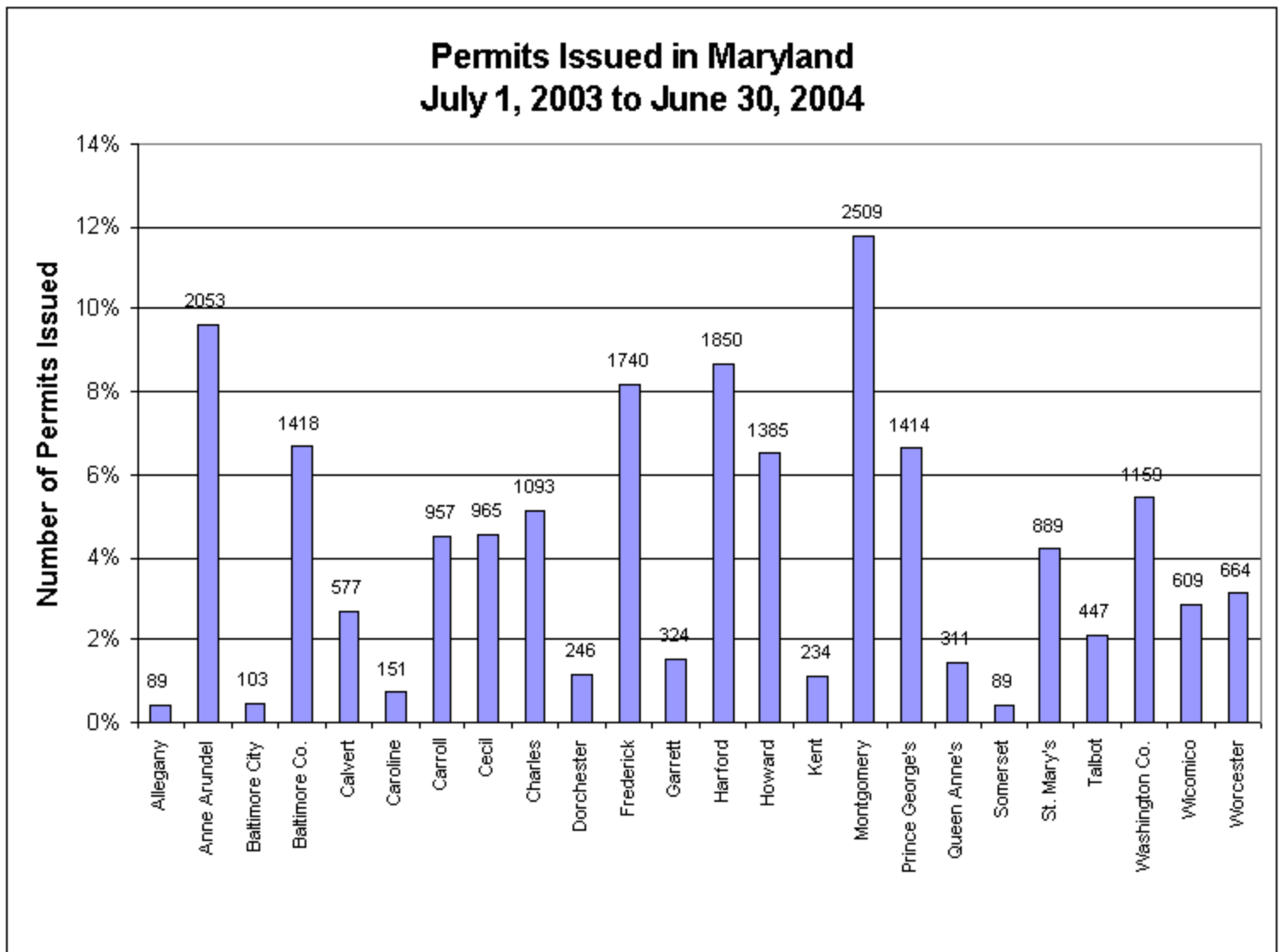
Source: HBRU and Md. Dept. of Planning, for Single Family Permits Issued July 1, 2003 through June 30, 2004

The following graph shows the breakdown of builders' headquarters for each county and state:



Source: HBRU

The following chart shows the number of permits issued in each county from July 1, 2003 through June 30, 2004.



Source: Md. Department of Planning data

III. **LAW ENFORCEMENT**

The Home Builder Registration Act provides an enforcement mechanism with the objectives of (1) keeping unregistered builders from building in Maryland and (2) preventing registered builders who establish a bad track record of unresolved disputes or legal violations from continuing to build in Maryland.

To accomplish these objectives, the HBRA prohibits unregistered builders from building and authorizes the Unit to use civil administrative proceedings to seek a cease and desist order and a civil penalty of up to \$1,000 per day of unregistered practice. HBRA §§ 4.5-501 and 4.5-502. In addition, the HBRA provides that the Unit may deny registration to an applicant, reprimand a registrant, suspend or revoke a registration, or impose a civil penalty if the Unit determines that the applicant or registrant has engaged in any of the specified practices stated in HBRA §4.5-308.

The Unit opened 57 investigations between July 1, 2003 and June 30, 2004. These investigations involved allegations of violation of the HBRA, other building related laws, or the Consumer Protection Act. Twenty- three of these investigations have now been closed, enforcement actions have been taken in another thirteen, and twenty-one remain under continuing investigation. The Unit receives information from many sources, including consumers, other builders, and permit offices. The results of these enforcement actions are summarized as follows:

- The HBRU charged a Beltsville builder and its principal with entering into contracts with consumers to construct homes in Montgomery and Prince George's County, accepting partial payment from those consumers, but not beginning construction or refunding the consumers' monies. The HBRU further alleged that the builder violated the Maryland Custom Home Protection Act and the New Homes Deposits Act by failing to place deposits and payments into an escrow account or having a surety bond to cover the deposit and that they violated the Consumer Protection Act by failing to build the homes as promised. The charges also alleged that the principal of the company entered into contracts to build homes using the name of another company, whose application to register as a home builder was denied by the HBRU. A hearing was conducted June 18, 2004 before the Office of Administrative Hearings, which issued a proposed decision on October 25, 2004 finding that the builder engaged in the violations as alleged. The HBRU is seeking an order from the Consumer Protection Division requiring the builder to pay restitution, civil penalties and the costs incurred by the Unit in bringing the action.
- The HBRU charged an Annapolis builder and its principal with violation of the Maryland Custom Home Protection Act, including failing to place a \$13,723 deposit into an escrow account or post a surety bond to cover the deposit. The HBRU further alleged that the builder and its principal violated the Home Builder

Registration Act by acting as a home builder without being registered with the HBRU, and violating the Consumer Protection Act by failing to build homes as promised. The principal of the builder had previously applied to register another company as a home builder in the State of Maryland, but was denied by the HBRU. A hearing was conducted October 12, 2004 before the Office of Administrative Hearings. The HBRU is seeking an order from the Consumer Protection Division requiring the builder to pay restitution, civil penalties and the costs incurred by the Unit in bringing the action.

- The Consumer Protection Division issued a cease and desist order requiring two related Baltimore area home builders and their principals to pay more than \$605,362.50 in restitution for taking deposits and payments from consumers but failing to complete consumers' homes. The Division's order found that the two builders and their principals entered into contracts with consumers to construct homes in Baltimore City and Baltimore County, accepted partial payment from those consumers, and promised to begin construction. To date, however, the builders have either failed to begin or complete construction on a number of homes and have not refunded the monies paid. A hearing is set for November 30, 2004 before the Office of Administrative Hearings. The HBRU is seeking an order from the Consumer Protection Division requiring the builder to pay restitution, civil penalties and the costs incurred by the Unit in bringing the action.
- The Consumer Protection Division issued a Final Order against a Prince George's County builder, requiring him to refund payments of \$23,500 collected from a consumer in Prince George's County and pay penalties of \$100,000. The Division found that the builder from Temple Hills violated Maryland's Custom Home Protection Act by failing to place monies paid by consumers into an escrow account or having a surety bond to cover the deposits; violated the Home Builder Registration Act by acting as a home builder without being registered; and violated the Consumer Protection Act by failing to build homes as promised.
- The HBRU filed a statement of charges against a Garrett County home builder who it alleges took deposits and payments from a consumer and failed to complete construction, or refund the payments. The HBRU alleges that the builder violated the Maryland Custom Home Protection Act, the Home Builder Registration Act and the Consumer Protection Act by failing to place the consumer's \$24,500 into an escrow account or having a surety bond to cover the deposit and by failing to build the home as promised. The HBRU has also suspended the builder's registration and proposed revocation of the registration. A hearing on the charges was held on November 1, 2004.
- The HBRU filed a statement of charges against another Garrett County home builder and its principals alleging that they took deposits and payments from a consumer and failed to complete construction or refund the payments. The HBRU

has also suspended the builder's registration and proposed revocation of the registration. A hearing on the charges is set for December 16, 2004.

- The Consumer Protection Division issued Final Orders upholding the HBRU's denial of the applications of builders from Annapolis and Westminster to register as new home builders in the State of Maryland. The Division found that builders deceptively attempted to register as a home builder by failing to disclose to the HBRU lawsuits, judgments, and liens.
- The HBRU entered into Assurances of Discontinuance with builders from Hagerstown and Baltimore County to settle allegations that each of the companies continued to act as a home builder in violation of the Home Builder Registration Act after its registration expired. The companies brought their registrations into compliance, agreed to penalties of \$1,000 and \$6,000, respectively, and agreed to submit any complaints that cannot be resolved through mediation to binding arbitration through the Division's arbitration program.
- The HBRU entered into Assurance of Discontinuance with an Anne Arundel County builder and its principal to resolve allegations that they built homes without registering with the HBRU and pulled permits using the registration number of another builder. The builder has since registered and under the settlement, agreed to pay penalties of \$5,000. The builder also agreed to submit complaints arising out of contracts entered into prior to the date of the settlement, that cannot be resolved through mediation, to the Division's arbitration program.
- The HBRU entered into an Assurance of Discontinuance with three related companies based in Baltimore County, and their principals, to resolve allegations that they built homes without registering with the HBRU and pulled permits using the registration number of another builder. One of the companies has since registered and the other two are no longer building. Under the settlement, the companies agreed to pay penalties of \$5,000 and submit complaints arising out of contracts entered into prior to the date of the settlement that cannot be resolved through mediation to the Division's arbitration program.
- The HBRU entered into settlement agreements with 2 builders from Salisbury and Denton, for engaging in building activity prior to registering with the Unit. Under the settlements, the builders registered and agreed to pay penalties of \$600.
- The HBRU reached a settlement with another builder based in Westminster to resolve the proposed revocation of its home builder registration after the registration check presented by the builder was returned for insufficient funds. Under the settlement, the builder paid the registration fee and penalties of \$500.

- The HBRU revoked the registration of a builder based in West Virginia after the registration check presented by the builder was returned for insufficient funds. The builder was ordered to pay penalties of \$1,000.

IV. COMMUNICATION WITH BUILDERS AND CONSUMERS

A. OUTREACH TO BUILDERS

The Home Builder Registration Unit continued to travel throughout the State to meet with builders and consumers about issues related to new home builders. The Unit participated in and provided information for workshops with other government agencies for consumers rebuilding structures damaged by Hurricane Isabel.

The Unit has also continued to correspond with builders to keep them updated about issues affecting them. The Unit writes to builders notifying them that their registration will be expiring in three months and providing them with the information and forms they will need to renew their registrations. The Unit also handled numerous builder inquiries by phone and by e-mail about the Home Builder Registration Act's registration and renewal processes. Additionally, the Unit began sending e-mails to builders on a quarterly basis advising them about enforcement actions brought by the Unit.

B. CONSUMER EDUCATION PAMPHLET

The HBRA required that the Unit develop a consumer information pamphlet describing the rights and remedies of consumers in the purchase of a new home and providing any other information that the Division considers reasonably necessary to assist consumers in the purchase of a new home. The law further requires that the consumer information pamphlet be given to consumers by builders before they sign a contract to purchase a new home and that the receipt of the consumer information pamphlet shall be acknowledged in writing. HBRA §4.5-202(c).

The Unit consulted with the industry, and developed and published a consumer education pamphlet, *BUYING A NEW HOME - Consumer Rights and Remedies Under Maryland Law*, in December, 2000. The Unit also drafted and distributed a model form for the consumer to sign to acknowledge receipt of the pamphlet. The Unit recently updated the pamphlet to reflect recent changes to the law. A copy of the revised pamphlet is attached.

As of June 30, 2004, the Unit had distributed a total of 145,418 consumer information pamphlets to builders. Between July 1, 2003 and June 30, 2004, the Unit distributed 16,968 pamphlets to builders.

C. HBRU WEBSITE

The Home Builder Registration Unit has maintained and updated its website to make information readily available to consumers, builders, permit offices and other entities requiring information about the home building industry. The website has been operational since January, 2001 and is updated regularly as information changes. Since the website can be accessed by anyone with Internet access, it is a significant mode of outreach and is an education resource for both consumers and builders. The Unit has added to the website the ability to search for builders either by the name of the builder or by registration number. The website address is www.oag.state.md.us/homebuilder. On the website can be found:

- Information about the Home Builder Registration Unit, the Home Builder Registration Act, and the responsibility of builders pursuant to the Act.
- A list of currently registered builders that can be searched either by builder name or by registration number.
- Registration materials including all the registration forms.
- The Home Builder Registration Act and other applicable laws.
- The consumer information pamphlet developed by the Home Builder Registration Unit, *BUYING A NEW HOME - Consumer Rights and Remedies Under Maryland Law*.
- The Builder New Home Disclosure Form
- A sample Surety Bond that builders can use for the protection of consumer deposits.
- A sample Letter of Credit that builders can use for the protection of consumer deposits.
- The 2003, 2002 and 2001 Annual reports of the Home Builder Registration Unit.
- The Report prepared by the Unit in December 2003 regarding the feasibility of creating a Home Builder Guaranty Fund.

The Unit is currently working on a project to enable builders to register and renew their registrations over the Internet.

V. COORDINATION WITH LOCAL PERMIT OFFICES

Permit offices play a pivotal role in the regulatory scheme of the Home Builder Registration Act. First, the building and permits department of a county may not issue a permit for home building unless the permit includes the home builder registration number of a registrant. HBRA § 4.5-601. This is the critical first line of defense against unregistered builders. Second, local permit offices are required to notify the Unit about any builder who, within a reasonable period of time, fails to correct a building code violation.

The Unit has communicated regularly with 42 local and municipal permit offices across the state. An informational letter and copies of the registration packets were provided to the offices for distribution to builders in need of registration. The Unit continues to e-mail and send out printed copies of the lists of registered and expired builders to local permit offices on a monthly basis and communicates with them regularly. Additionally, permit offices are encouraged to check the Unit's website to find out if a builder applying for a permit is registered.

VI. EVALUATING CONSUMER AND BUILDER DISPUTE RESOLUTION

The Home Builder Registration Act requires that the Unit "collect and maintain information on the resolution of consumer complaints involving new home builders." HBRA §4.5-202(d). Although there is no central repository of information about consumer/builder disputes, consumer complaints filed with the Mediation Unit of the Consumer Protection Division are illustrative.

Between July 1, 2003 and June 30, 2004, the Mediation Unit of the Consumer Protection Division received 273 written consumer complaints filed against 147 different home builders. When a consumer complaint is filed with the Consumer Protection Division, a mediator from the Mediation Unit contacts both the builder and consumer and assists them in resolving their dispute. A mediated agreement is possible only if both parties can agree upon mutually acceptable terms. A mediation is considered successful if it results in a mediation agreement. The Division also offers arbitration at no cost to the parties if the builder and consumer are unable to resolve the complaint through mediation and both the builder and consumer agree to submit their dispute to arbitration.

Of the complaints resolved by the Division's Mediation Unit, 72.4% of the complaints were mediated; 3% were arbitrated; 8.4% were filed for information only; 4.3% were resolved by the consumers without mediation by the Division; 2.3% were closed after the Division provided advice to the consumer; 1.6% were referred for investigation; 2.8% were referred to other agencies having jurisdiction; and 13.4% had other miscellaneous resolutions. Forty percent (40%) of the complaints mediated by the Division resulted in positive relief for consumers, such as the defects being corrected by the builder or money being paid to the consumer. The total amount of money or savings obtained for consumers in these complaints was \$48,738.21.

The 273 written complaints raised the following issues (many complaints included more than one issue):

- *Construction Defect Issues* (561), including interior finishing (92), landscaping (71), exterior shells (70), electric or plumbing problems (67), external structures (64), foundation or basement defects (65), roofing issues (32), HVAC issues (29), and appliances (2);
- *Incomplete Construction* (17), including disputes between the builder and owner about whether construction has been completed;
- *Deposit Issues* (16), including consumers seeking return of their deposits after being denied financing or withdrawing from their contract for other reasons;
- *Major Structural Defects* (15), including claims that there were problems with the foundation, footings or floor systems of the home;
- *Construction Delays* (12);
- *Misrepresentation Claims* (6), including claims that the finished home was not constructed in the manner promised by the builder;
- *Subcontractors* (5), including failure to pay or identify subcontractors;
- *Coverage by Home Warranty Security Plans* (2); and
- *Contract violations* (1);

Consumers also filed complaints against builders with the Montgomery County Office of Consumer Affairs and with the Howard County Office of Consumer Affairs. Between July 1, 2003 and June 30, 2004, there were 102 complaints filed in Montgomery County. In Howard County, 53 cases were handled during this period.

VII. WARRANTY PROGRAM

During the 2002 Session, the Maryland General Assembly enacted Chapter 492, which transferred responsibility for New Home Warranty Security Plans from the Department of Labor, Licensing and Regulation to the Home Builder Unit. Six New Home Warranty Security Plans are currently approved to operate in Maryland. The Unit has requested information from the plans concerning their operations and claims experience to ensure the plans are continuing to meet the requirements of the New Home Warranty law.

In 2003, the six approved plans reported the enrollment of 12,602 new homes for warranty coverage. From those new homes the plans reported a total of 464 claims for warranty coverage. New Home Warranty Security Plans are required to notify the Unit of a decision to deny warranty coverage for any part or all of a claim. Since July 1, 2003, the Unit has received notice of 105 warranty claims that were denied.

The 105 warranty claims that were denied raised the following issues (many claims raised more than one issue):

- Structural Defect (81), including the definition of defect not being met (55), warranty coverage having expired (14), defect excluded by plan (10), the defect claimed being within performance standards (2);
- Material/Workmanship (45), including the warranty coverage having expired (31), defect excluded by plan (10), the defect claimed being with performance standards (4);
- Plumbing/Electrical/HVAC (14), including warranty coverage having expired (10), defect excluded by plan (3), the defect claimed being within performance standards (1);
- Equipment/Appliance/Fixture (3), including warranty coverage having expired (2), defect excluded by plan (1); and
- Defect Not Described (20).

VIII. LEGISLATIVE CHANGES

During the 2004 Session, the Maryland General Assembly lowered the registration fees to be paid by builders when they register and renew their registration. Under Chapter 430, effective June 1, 2004, the General Assembly lowered the fee for an initial two-year registration to \$300. Upon renewal of that registration, a builder who was issued ten or fewer permits for the construction of new homes during the preceding year will pay a renewal fee of \$150 for an additional two year period. A builder who was issued 11 or more permits during the preceding year will pay a renewal fee of \$300 for an additional two year period. Under legislation previously enacted during the 2002 Session to address concerns raised by smaller builders that they should not be paying the same registration fee as larger builders, the General Assembly set the initial registration fee of \$600 for a two-year period and the renewal fee at \$300 for a builder who was issued ten or fewer permits and \$600 for a builder who was issued 11 or more permits during the preceding year.

When the General Assembly enacted the Home Builder Registration Act in the 2000 Session, it also directed the Consumer Protection Division to study the feasibility of a new home builder guaranty fund and report its findings and recommendations to the Senate Finance and House Economic Matters Committees. The Division submitted its report to those Committees in December 2003. The report concluded that “[a] Guaranty Fund could provide important protection for consumers who purchase new homes in Maryland.” The report further stated that “a program similar to that employed by the Home Improvement Commission, in which aggrieved consumers, businesses, and the Guaranty Fund are able to present their cases before an Administrative Law Judge at the Office of Administrative Hearings would provide the most efficient and cost-effective means of providing a judicial forum for determination of claims against the Guaranty Fund.”